

75-5-501. Power of attorney not affected by disability or lapse of time -- Agent responsibilities.

(1) Whenever a principal designates another as the principal's attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney-in-fact or agent is exercisable by the attorney-in-fact or agent as provided in the power on behalf of the principal notwithstanding:

(a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or

(b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination.

(2) If an attorney-in-fact or agent determines that the principal has become incapacitated or has acquired a disability and the power of attorney by its terms remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:

(a) notify all interested persons of the attorney-in-fact's or agent's status as the power of attorney holder within 30 days of the principal's incapacitation, and provide them with the attorney-in-fact's or agent's name and address;

(b) provide to any interested persons upon written request, a copy of the power of attorney;

(c) provide to any interested persons upon written request, an annual accounting of the assets to which the power of attorney applies, unless the power of attorney specifically directs that the attorney-in-fact or agent is not required to do so; and

(d) notify all interested persons upon the death of the principal.

(3) All interested persons shall be notified within 10 days if the attorney-in-fact or agent changes. The notification shall be made by the new attorney-in-fact or agent who shall then be accountable to the interested persons in accordance with Subsection (2).

(4) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's heirs, devisees, and personal representative as if the principal were alive, competent, and did not have a disability, except as provided in Section 75-5-503.

(5) A conservator may be appointed for a principal even though the principal has a valid power of attorney in place. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator, pursuant to court order, has the same power the principal would have had, if the principal did not have a disability or was not incompetent, to revoke, suspend, or terminate all or any part of the power of attorney or agency.

(6) For the purposes of this section, "interested person" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable.

Amended by Chapter 274, 2012 General Session